

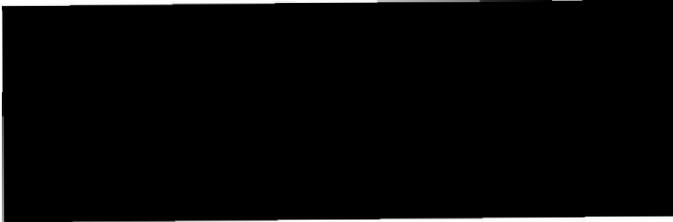
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FILE: EAC 04 242 54032 Office: VERMONT SERVICE CENTER

Date: SEP 18 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to her for further consideration.

The petitioner is a consulting and IT services business that seeks to employ the beneficiary as a project leader to work in Detroit, Michigan, at the site of petitioner's client, General Motors Corporation (GM), on a project entitled "GM Lead Fulfillment Operations." The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and copies of previously submitted evidence including a credentials evaluation and excerpts from the website of General Motors (GM).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a project leader to work in Detroit, Michigan, at the site of petitioner's client - General Motors Corporation (GM) - on a project entitled "GM Lead Fulfillment Operations." Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 19, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform the following duties:

- Centralize Lead Fulfillment Operations data processing, treatment determination, data storage and reporting to a single vendor;
- Improve ability to manage and track leads;
- Cost reductions associated with Lead Fulfillment Operations process efficiencies;
- Improve service, timeliness and gain operational and cost efficiencies;
- Every possible effort must be made to build the logic and business rule engines in such a way as to facilitate rapid, accurate changes. Modifications to business rules are frequent and sometimes in large scale; and
- These modifications must be completed in a timely manner, sometimes within a daily production cycle.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science, engineering, information systems, or a directly related field.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's baccalaureate degree in mechanical engineering, his master's degree in business administration, and his work experience as a zonal sales manager for GM are unrelated to the proffered position. On appeal, counsel states, in part, that the proffered position is not a computer science position; it is a mechanical engineering position with computer applications duties. Counsel states further that in order to perform the proffered duties for the petitioner's client corporation - GM - the beneficiary must apply in-depth knowledge of the principles of mechanical engineering. Counsel also states that the record contains job advertisements from the GM website which stipulate the requirement of a bachelor's degree in mechanical or electrical engineering for its project engineer positions, whose duties are similar to the proposed duties.

The record contains the following documentation related to the beneficiary's qualifications:

- Copies of the beneficiary's foreign bachelor's degree in mechanical engineering, and related transcripts;
- Copies of the beneficiary's foreign "Postgraduate Diploma in Business Management" and related transcript;
- Credentials evaluation concluding that the beneficiary's foreign education is equivalent to the completion of a Bachelor of Science Degree in Mechanical Engineering and a Master of

Business Administration Degree from an accredited institution of tertiary education in the United States;

- Service certificate from the Indian business [REDACTED] reflecting that the beneficiary worked from 08/28/92 to 06/22/95, as a “G.E.T. (Mech)” and “Sr. Engineer (Mech)”;
- Document certifying the beneficiary’s employment as a “Dealer Account Manager” at the Indian business, [REDACTED], from 07/07/97 to 04/30/99; and
- Service and Salary Certificate certifying that the beneficiary was employed at General Motors India from 05/03/99 to 04/30/03 as a Zonal Sales Manager.

Counsel’s assertion on appeal that the proffered position is a mechanical engineering position with computer applications duties, not a computer science position, is noted. Neither the job title on the petition nor on the labor condition application, however, reflects that the proffered position is that of a mechanical engineer. Further, although counsel asserts that the record contains GM job postings to show that its project engineer positions require a bachelor’s degree in mechanical or electrical engineering, a review of the advertised positions does not find that the described duties, which include releasing parts for production, performing complex design analysis, developing engineering designs including subsystems, and assisting in developing engineering designs, are parallel to the proposed duties of the proffered position. Moreover, in her August 19, 2004 letter, the petitioner’s “Manager - HR/Immigration” stated, in part: “In our hiring experience, we have found that individuals, who have attained a baccalaureate-level education in Computer Science, Engineering, Information Systems, or a directly related field, are particularly well suited for the *Programmer Analyst function*. (Emphasis added.)

The AAO does not concur with the director’s finding that the beneficiary is not qualified for the proffered position, which is primarily that of a programmer/programmer analyst. A review of the Computer Programmers job qualifications in the *Handbook*, 2006-2007 edition, finds that there are many training paths available for computer programmers, and the associate degree is a widely used entry-level credential. In this case, a company that specializes in evaluating academic credentials finds that the beneficiary has the equivalent of a Bachelor of Science Degree in Mechanical Engineering and a Master of Business Administration Degree from an accredited institution of tertiary education in the United States. The beneficiary is therefore qualified for the proffered position. The petition may not be approved, however, because the director has not determined whether the proffered position is a specialty occupation. It is also noted that the record does not contain any documentation that establishes the specific duties the beneficiary would perform under contract for the petitioner’s client. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.